

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOSE L. DIAZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civ. No. 2:17-cv-0482
Crim. No. 2:13-cr-154(12)
CHIEF JUDGE SARGUS
Magistrate Judge King

ORDER

Petitioner, a federal prisoner, filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. *Motion to Vacate*, ECF No. 341. On October 10, 2018, the United States Magistrate Judge recommended that Petitioner's claims be denied as time-barred and that this action be dismissed. *Report and Recommendation*, ECF No. 348. Although the parties were advised of their right to object to that recommendation and of the consequences of their failure to do so, there has been no objection.


Having reviewed the record in this action, see 28 U.S.C. § 636(b), Fed. R. Civ. P. 72(b), the Court **ADOPTS AND AFFIRMS** the *Report and Recommendation*, ECF No. 348. Petitioner's claims are denied as time-barred and this action is **DISMISSED**.

Pursuant to Rule 11 of the Rules Governing Section 2255 Proceedings for the United States District Courts, the Court now considers whether to issue a certificate of appealability. See 28 U.S.C. § 2255(d). When a claim has been denied on the merits, a certificate of appealability may issue only if the petitioner "has

made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make a substantial showing of the denial of a constitutional right, a petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4 (1983)). When a claim has been denied on procedural grounds, a certificate of appealability may issue if the petitioner establishes that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484.

Upon review of the record, this Court is persuaded that reasonable jurists could not debate whether Petitioner's claims should have been resolved differently. Therefore, the Court **DECLINES** to issue a certificate of appealability.

10-31-2018
Date



Edmund A. Sargus, Jr.
Chief United States District Judge